

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 6299

BILL NUMBER: HB 1104

DATE PREPARED: Apr 29, 1999

BILL AMENDED: Apr 29, 1999

SUBJECT: Non commercial beer and wine

FISCAL ANALYST: Kristin Breen

PHONE NUMBER: 232-9567

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) (1) This bill requires the Department of Revenue to compile a list of retailer's that sell tobacco products. It requires the Department of Revenue to provide to the Alcoholic Beverage Commission and the Division of Mental Health an annual list of retail merchants that sell tobacco products. It authorizes excise police and the Alcoholic Beverage Commission to enforce tobacco laws. It establishes the Youth Tobacco Education and Enforcement Fund. It establishes specific penalties for violating certain tobacco laws. It requires that an underage tobacco buyer be issued a citation when a seller is issued a citation. It provides a penalty to a retail establishment for selling or distributing tobacco products to an underage person. It restricts outdoor tobacco product advertisements. It amends the locations where a tobacco vending machine may be placed. It provides that a retail establishment that has as its primary purpose the sale of tobacco or tobacco products may not allow a person who is less than 18 years of age to enter the retail establishment.

(2) It provides that the alcoholic beverage laws do not prohibit the manufacture of beer or wine that is not offered for sale and is used only for specific personal or noncommercial uses. It provides that a brewer or winery may allow transportation to and consumption of this beer or wine on the licensed premises but may not allow sale of the product on the licensed premises. It allows a person to carry, convey, or consume this beer or wine on or about a licensed premises.

Effective Date: (Amended) May 13, 1999; May 14, 1999; July 1, 1999; January 1, 2000.

Explanation of State Expenditures: (Revised) (1) This bill provides that the Department of Revenue (DOR) must compile annually a list of retail merchants that sell tobacco products and provide that list to the Division of Mental Health (DMH) and the Alcoholic Beverage Commission (ABC). The DOR must prescribe a form or modify an existing form to collect this information. Since the DOR does not currently know which retail establishments sell tobacco, it would have to send a form to all of the estimated 400,000 retail establishments in the state. If the DOR sent a form to all 400,000 locations, printing and mailing costs would equal

approximately \$144,000 (400,000 locations x \$0.36 per form). This cost would be reduced if the DOR sent one form to all consolidated filers, such as grocery and convenience store chains. There would also be additional costs to modify or develop a form and to input the information. The DOR estimates that the total cost could equal approximately \$200,000 the first year. There may be additional costs in subsequent years to update the list.

This bill creates the Youth Tobacco Education and Enforcement Fund, which is to be administered by the ABC. Expenses of administering the Fund are to be paid from money in the Fund. The ABC is to receive one-third of the civil penalty revenue deposited in that Fund for the enforcement of youth tobacco laws.

This bill grants ABC excise officers full police powers and duties to enforce tobacco laws, including tobacco vending machines. It also authorizes the ABC to investigate a violation of and enforce a penalty for a violation of certain tobacco laws. It is estimated that there are at least 100,000 locations statewide where tobacco products are sold. This estimate includes vending machines that distribute tobacco products. It is also estimated that at most, 10,000 of the 100,000 locations are already inspected by the ABC. Therefore, there would be approximately 90,000 additional locations for the ABC to inspect, plus additional inspection duties for the 10,000 already permitted locations.

The ABC currently has a contract with the DMH to conduct inspections and issue warnings for violations on a test basis to ensure compliance with the law prohibiting the sale of tobacco products to persons less than 18 years of age. The ABC conducts approximately 900 random inspections each year. The ABC also follows up the random inspections with 200 targeted inspections each year. Excise officers work overtime to conduct these inspections. The ABC charges \$25 per inspection, which is paid from the Addiction Services Fund. The ABC's contract with the DMH is for \$48,000 per year.

The ABC currently has 45 excise officers to investigate and inspect the 10,000 alcoholic beverage permittees. In 1997, excise officers conducted 15,656 inspections of ABC permittees, for an average of about 348 inspections per officer per year. If additional excise officers are hired, there would be additional costs for salary, benefits and equipment. The cost for salary and benefits for each new officer is estimated to be \$35,118 the first year and \$38,264 the second year. Excise officers are located in six district offices throughout the state. If additional officers are hired, the district offices may need to move into larger office space to handle the additional officers and permit files.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. As of February 1999, the ABC had three vacant positions. Approximately \$2.2 million was reverted to the state General Fund from excise tax revenue in FY 98. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

This bill may result in an increase in the number of violations cited, which would increase costs associated with court appearances, depositions, and report drafting. The total cost of the additional inspections, including court appearances and report and deposition drafting is indeterminable. However, based on the ABC's records, the average cost of enforcement and administration of a violation is estimated to be approximately \$300. The ABC currently has one full-time and four part-time administrative law judges and one part-time prosecutor to deal with violations and appeals related to alcoholic beverages.

Explanation of State Revenues: (Revised) (1) This bill establishes new civil penalties for violations of certain tobacco laws. Penalty revenue is to be deposited in the Youth Tobacco Education and Enforcement Fund. Money in the Fund is to be distributed as follows: (A) *One-third for youth smoking prevention education.* The ABC may contract with the Indiana State Department of Health or the office of the secretary of the Family and Social Services Administration (FSSA) for youth smoking prevention education programs. The Division of Mental Health within the FSSA currently has youth tobacco prevention programs in each of the 92 counties. These programs are contracted with a provider in each county and receive approximately \$6.7 million in federal funding. The Division of Family and Children has a prevention program for tobacco and other drugs. (B) *One-third for education and training of retailers who sell tobacco products.* The ABC may contract with education and training programs of the office of the secretary of FSSA, the Division of Mental Health, enforcement officers, or a program approved by the ABC. (C) *One-third to the ABC for enforcement of youth tobacco laws.* The amount of money deposited in the Fund is dependent upon the number of violations.

It provides that it is a Class C infraction for a retail establishment to sell or distribute tobacco to a person less than 18 years of age or to allow such person to enter the establishment if its primary purpose is the sale of tobacco products. It also amends the locations where a tobacco vending machine may be placed. If additional court cases occur, revenue to the state General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class C infraction is \$500 which is deposited in the state General Fund. If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed. 70% of the court fee would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

The bill restricts outdoor tobacco product advertisements and changes a violation of the law from a Class C misdemeanor to a Class C infraction. Revenue to the Common School Fund may be reduced if an infraction judgment rather than a fine is assessed, but revenue to the state General Fund may increase. (Fines are deposited in the Common School Fund while infraction judgments are deposited in the state General Fund.) Currently, the maximum judgment for a Class C misdemeanor is \$500. Under this bill, an offender could pay an infraction judgment of \$500. Revenue from court fees may also be reduced. The court fee for a misdemeanor is \$120 while the court fee for an infraction is \$70.

A 1992 federal law called the Synar Amendment requires states to implement a plan to reduce the sale of tobacco to minors. Indiana set target rates for non-compliance with the law at 25% for 1999 and 20% for 2000. If Indiana fails to reach these rates, it could lose up to \$13 million in federal Substance Abuse Prevention and Treatment (SAPT) grant funds. Money from the SAPT grant is used to fund substance abuse prevention and treatment programs.

(2) This bill may result in a minimal decrease in the number of Class C misdemeanor cases. If fewer court cases occur and fewer fines are collected, revenue to both the Common School Fund and the state General Fund would decrease. The maximum fine for a Class C misdemeanor is \$500. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, county or municipal court (courts of record), 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: (Revised) (1) Costs to local governments might be reduced since no term of imprisonment is imposed for an infraction. A Class C misdemeanor is punishable by up to 60 days in jail. The average daily cost of housing a prisoner in jail is roughly \$44.

(2) This bill may decrease jail expenses by a minimal amount.

Explanation of Local Revenues: (Revised) (1) If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources: (a) The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (b) A \$3 fee would be assessed, and if collected would be deposited into the county law enforcement continuing education fund. (c) A \$2 jury fee is assessed, and if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

(2) If fewer court actions occur, local governments would receive less court fee revenue.

State Agencies Affected: Alcoholic Beverage Commission; Department of Revenue; Indiana State Department of Health; Division of Mental Health, Family and Social Services Administration.

Local Agencies Affected: Trial courts; local law enforcement agencies.

Information Sources: John Hanley, Alcoholic Beverage Commission, 232-2444; John Viernes, Division of Mental Health, 232-7913; Russ Abrams, Department of Revenue, 232-2104; Lauren Polite, Family and Social Services Administration, 232-1149; Mike Pitts, Indiana Petroleum Marketers and Convenience Store Association, 633-4662; Indiana Sheriffs Association.